

OGC Has Reviewed

Chief, Fiscal Branch

27 May 1949

Office of the General Counsel

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1. We have your memorandum of 20 May 1949 re subject, and have reviewed the accompanying file in the light of the [REDACTED] law. Our opinion is submitted for your advisement.

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2. In summary of the facts, it appears that [REDACTED] a nationalized [REDACTED], was hired by [REDACTED] from an agency of the [REDACTED]. She was employed on a monthly basis, payable bi-weekly for an indefinite period. [REDACTED] informed the [REDACTED] that it would assume the obligation to provide repatriation expenses at the termination of employment. On December 30, 1948, she notified [REDACTED] that on the advice of her physician she was going on leave. There is nothing in the file showing that [REDACTED] had any notice of her intention to take a rest prior to the receipt of this letter. Sometime later, she apparently went to [REDACTED] leaving her financial and legal affairs in the hands of a [REDACTED]. By letter dated 17 January 1949, [REDACTED] that she was being placed on annual leave pending the receipt of a doctor's certificate to substantiate her illness. On January 26, 1949, [REDACTED] received a letter from [REDACTED] dated January 15, 1949 posted in [REDACTED] in which she tendered her resignation. This was accepted by [REDACTED] and she was separated on the same date. During the following month of February, [REDACTED] apparently conferred with [REDACTED] representatives in regard to certain indemnities which [REDACTED] was claiming. In a letter of February 15, [REDACTED] terms of settlement which were reiterated in a letter of February 17. On April 11, a summons to appear in an [REDACTED] legal action was served on [REDACTED]. At the behest of [REDACTED] Legal Advisor obtained a suspension of the summons for a period of two months in which the claim could be submitted to the Washington office for settlement. This extension will expire on June 19. It should be noted that the record contains a certificate of [REDACTED] marriage in [REDACTED] on March 10, 1949.

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3. There is no dispute in regard to the amount of salary or accrued annual leave which is due the employee. However, [REDACTED] is claiming an indemnity payable under the [REDACTED] law to female employees who leave on the occasion of their marriage, as well as an amount which covers the cost of repatriation. [REDACTED] on the other hand contends that the amount accrued to the credit of the employee is subject to a deduction in the form of a penalty provided by [REDACTED] law for [REDACTED] failure to give timely notice of her resignation. These are the only questions presented and we will answer the last first.

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4. In her resignation, [REDACTED] to treat the unexpired portion of her leave as the period of notification required by [REDACTED]. In this letter, and in a later one from [REDACTED] it was indicated that her

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25X1A contract with [REDACTED] stipulated only a 14-day notice prior to resignation. 25X1A
 25X1A [REDACTED] provides, under [REDACTED] that either party
 25X1A must give 30 days prior notice of termination in the case of monthly paid
 25X1A workers. [REDACTED] of the same Act specifies the penalty on the party
 25X1A failing to give such notice as the amount of wages payable to the worker either
 25X1A for the required period of notice or for the unexpired portion thereof. We
 25X1A do not have a copy of [REDACTED] employment contract before us, but it does
 25X1A not appear to be material since no prior notice was given. Her letter of
 25X1A resignation did not request deferment of the effective date and separation
 25X1A was completed on the date of receipt: 26 January 1949. To that extent then,
 25X1A she did not comply with [REDACTED] Her request to treat the unexpired por-
 25X1A tion of her leave as the period of notice amounts to an extension of furlough
 25X1A after the intention to resign has come to the attention of the employer agency.
 25X1A Under our "Lump Sum Leave Act" of December 21, 1944, accrued annual leave
 25X1A is paid in a final amount on the date of separation, and the Comptroller
 25X1A General has held that annual leave cannot be extended beyond the date when
 25X1A intent of separation is known, except in cases where separation is the result
 25X1A of a reduction in force and furlough is requested by the employee. See 24
 25X1A Comp. Gen. 511 and 26 Comp. Gen. 331. By operation of law as well as fact, then,
 25X1A [REDACTED] failed to provide any prior notice at all. We concur in the con-
 25X1A clusion of [REDACTED] is subject to the penalty.

25X1A 5. The contention on her side that she is entitled to an indemnity because
 25X1A of separation from employment because of marriage does not appear to be valid.
 25X1A In neither her original statement of absence, which was based on ill health, nor
 25X1A in her resignation - which she said was for personal reasons - is there any
 25X1A clear indication for our records that marriage was in her mind. 25X1A
 25X1A of the [REDACTED] law grants the indemnity to any female worker leaving "on the
 25X1A occasion of her marriage", and would appear to indicate an intention that the
 25X1A marriage should be proximately linked to the separation. In the absence of
 25X1A any statement of marital intent in her letter of separation, the passage of
 25X1A almost a month and a half between separation and ceremony is sufficient grounds
 25X1A for our rejection of her claim for indemnity.

25X1A 6. The question of repatriation, however, is a more difficult problem.
 25X1A [REDACTED] law provides for repatriation when the employee is
 25X1A separated for various causes, none of which fall within our facts. It is not
 25X1A at all clear from the record before us that the employee has a contract contain-
 25X1A ing an obligation on our part to meet the expenses of repatriation to [REDACTED]
 25X1A While we have acknowledged the obligation to the [REDACTED], we do not know what
 25X1A commitments were made to the individual herself. It is not a properly authorized
 25X1A travel expense and our authority to assume the obligation as partial considera-
 25X1A tion for services may well be open to question. No definite conclusion can be
 25X1A drawn in the absence of further facts. Since there is little time to obtain the
 25X1A amplifying data, and in view of its questionable nature, it is suggested that
 25X1A we resolve the doubt in favor of the Government and deny this charge as well as
 25X1A the marriage indemnity.

25X1A 7. The conclusion that [REDACTED] is entitled to a sum not in excess of
 25X1A [REDACTED] therefore appears to be correct.

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